CENTER FOR
Gender & Refugee
STUDIES

Protecting Refugees • Advancing Human Rights

Matter of A-B-: Slamming the Door on Domestic Violence Survivors

Background

When former Attorney General Jeff Sessions exercised a rarely used privilege and certified an approved asylum application referred to as "*Matter of A-B-*" for review, he began a process of unraveling decades of legal precedent protecting women from violence.[1] The applicant in that case, Ms. A.B., had credibly testified that she had endured 15 years of abuse by her husband including beatings, rapes, and specific, detailed threats on her life. She had fled to different parts of El Salvador, divorced her husband, and twice taken out restraining orders against him, yet her husband continued to track her down and abuse her without consequence.

While the immigration judge denied her claim, the Board of Immigration Appeals ("BIA") found that protection was warranted based on established legal precedent and the horrific violence Ms. A.B. had endured. On June 11, 2018, Sessions reversed the BIA's grant of asylum to Ms. A.B., vacated the previously controlling BIA precedent decision in *Matter of A-R-C-G-* (BIA 2014), and effectively slammed the door in the face of women seeking asylum protection from domestic violence.

Current Status

While the use of Sessions' *Matter of A-B-* ruling is currently enjoined in credible fear screenings, it continues to be applied in asylum decisions on the merits, leading to widely disparate outcomes that have resulted in domestic violence survivors being deported to persecution or death.

Matter of A-B- Found Unlawful as Applied to Credible Fear Screenings (*Grace v. Whitaker*)

In December 2018, the D.C. District Court granted a nationwide injunction requested by the Center for Gender and Refugee Studies (CGRS) and co-counsel which blocked the application of the legal standards articulated in *Matter of A-B-* in credible fear interviews, the initial screening process for asylum seekers. In *Grace v. Whitaker*,[2] **the federal district court found the *Matter of A-B-* standards inconsistent with existing legal precedents and Congressional intent behind the enactment of the Refugee Act of 1980,** which was to bring the U.S. into compliance with its international treaty obligations. Today the injunction remains in effect, prohibiting asylum officers from using the *Matter of A-B-* standards in the credible fear process.[3]

Matter of A-B- Still Applies to All Merits Decisions

Both the Department of Homeland Security in its training of asylum officers and the Department of Justice in its guidance to immigration judges and the BIA maintain that *Matter of A-B-* must be used in adjudicating asylum claims on their merits. As a result, many adjudicators summarily foreclose protection in these cases as a "matter of law," denying asylum based on Sessions' poorly reasoned decision without conducting the individualized, case-by-case analysis that is required. In fact, in the year following the issuance of *Matter of A-B-* asylum grant rates for individuals from El Salvador, Guatemala, and Honduras declined sharply, by 38 percent.[4] All other countries saw virtually no change in grant rates during that time frame. Nevertheless, in recent months there

---

[1] See e.g., Blaine Bookey, *Gender-based Asylum Post-Matter of A-R-C-G-: Evolving Standards of the Law*, 1 Southwestern J. Int'l L. 22 (2016); Karen Musalo, *Personal Violence, Public Matter: Evolving Standards in Gender-Based Asylum Law*, Harvard international Review (2014)

[2] *Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018)

[3] The government has appealed the *Grace* decision, which remains pending at the D.C. Circuit.

[4] According to data from the Syracuse University Transactional Records Access Clearinghouse (TRAC) Asylum Decision tool, available at https://trac.syr.edu/phptools/immigration/asylum/.

have been some encouraging decisions out of the federal courts of appeals reaffirming that domestic violence survivors can in fact qualify for asylum post-*Matter of A-B-*.[5]

Trump Administration Seeks to Codify *Matter of A-B-* in Binding Federal Regulations

However, on June 15, 2020, the Department of Justice and the Department of Homeland Security proposed a sweeping new rule that would codify many of the Trump Administration's most draconian asylum policies, including *Matter of A-B-*. Among other harmful provisions, the proposed rule changes the very definition of "refugee" to foreclose asylum for survivors of domestic violence and other so-called "private criminal acts." CGRS has joined thousands of advocates around the country in submitting comments urging the agencies to reject the rule.

Recommendations for Congress

Congress passed the Refugee Protection Act of 1980 to bring the U.S. into compliance with its international treaty obligations as a party to the UN Convention on Refugees (1967 Protocol). Accordingly, interpretation of or changes to U.S. asylum law should comport with UNHCR guidelines and principles. While a nation has the sovereign right to decide who can enter and remain in its country, these policies must be consistent with treaty obligations. In this case, UN guidance and international law reflect that domestic violence can form the basis of asylum protection when all other elements of the refugee definition are met, as they were in Ms. A.B.'s case. **On this basis, CGRS requests that Congress adhere to UNHCR guidelines and principles to solve the issues created by the *Matter of A-B-* decision and do the following:**

Define the "particular social group" category for asylum and "on account of " requirement: Inconsistent interpretations of the particular social group and the "nexus" or "on account of" language in the refugee definition found in the Immigration and Nationality Act (8 U.S.C. 1101(a)(42)) have led to disparate results in U.S. asylum jurisprudence. Simple legislative amendments could clarify the particular social group definition and the requirements for establishing nexus in line with international law. These clarifications would prevent continuing confusion and wasted resources due to erroneous new interpretations, such as the one in *Matter of A-B-*, which result in numerous appeals and remands in the already overburdened immigration court system. **We urge lawmakers to cosponsor the bicameral Refugee Protection Act of 2019, which includes language clarifying these requirements and allowing applicants wrongly denied asylum solely based on *Matter of A-B-* to reopen their cases.**

Rescind or defund *Matter of A-B-*: As the Judge in the *Grace* case found, *Matter of A-B-* is inconsistent with Congressional intent. Moreover, the consequences of continuing to implement *Matter of A-B-* are a matter of life and death for domestic violence survivors. Accordingly, Congress should direct the Department of Justice to rescind the decision or appropriators should use their power to instruct the Departments of Justice and Homeland Security that they may not use appropriated funds to implement it.

For Further Information

Kate Jastram, Director of Policy & Advocacy
Center for Gender and Refugee Studies
Telephone: 415-636-8454 | Email: jastramkate@uchastings.edu

- Full text of *Matter of A-B-*
- Full text of *Grace v. Whitaker*
- Additional information about CGRS
- Video interview with Ms. A.B.

[5] See e.g., *De Pena Paniagua v. Barr*, 957 F.3d 88 (1st Cir. Apr. 24, 2020) and *Juan Antonio v. Barr*, 959 F.3d 778 (6th Cir. May 19, 2020).